

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNIVERSITAS EDUCATION, LLC,

Plaintiff,

-against-

JACK E. ROBINSON, III a/k/a

JACK E. ROBINSON,

Defendant.

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Case No. 17 Misc. 95

**DECLARATION OF SETH L. MARCUS, ESQ., IN OPPOSITION TO PLAINTIFFS'
MOTION TO QUASH SUBPOEANA TO PAULA K. COLBATH ESQ.**

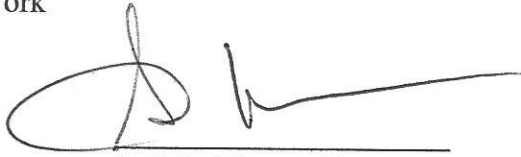
SETH L. MARCUS, ESQ., an attorney admitted to practice law in the courts of the State of New York, declares the following under penalty of perjury pursuant to 28 U.S.C.

§1746:

1. I am the attorney for the above captioned defendant, Jack E. Robinson, and submit this declaration in opposition to a Motion to Quash a subpoena requiring the deposition of Paula K. Colbath, Esq.
2. Ms. Colbath was aware well in advance of the meet and confer of March 14, 2017 of the grounds for which defendant was seeking her deposition in this matter. Attached hereto as Exhibit A, is an email chain by which I made her aware by February 7, 2017 as to specifically why we required her deposition. Nor was there anything "vague" on our call as to why defendant was seeking her deposition. Not only did I specifically identify §51 of the *Restatement of Law Governing Lawyers*, I read the applicable provision to her and pointed out that it was the authority that she invoked in support of plaintiffs cause of action for breach of fiduciary duty.

3. I also note that as of the date of this filing, plaintiff has still not supplemented its interrogatory responses, rendering it impossible to know whether those supplemental responses would have any effect on the necessity of taking Ms. Colbath's deposition or the topics that would be necessarily covered.

Dated: White Plains, New York
April 3, 2017

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a horizontal line and a small 'L'.

Seth L. Marcus, Esq.

Exhibit A

Seth Marcus

From: Seth Marcus
Sent: Tuesday, February 07, 2017 6:22 PM
To: 'Paula Colbath'; Paul S Samson
Cc: Leily Lashkari
Subject: RE: Universitas v. Robinson

Paula:

We are seeking your deposition because you are a relevant fact witness. You were representing Universitas during the time period relevant to important defenses and your knowledge potentially impacts those defenses. Specifically:

1. Regarding statute of limitations, as Universitas' attorney there are issues as to when you became aware of possible claims against Mr. Robinson.
2. Regarding your unique claims relating to breach of fiduciary duty while you were representing Universitas we need discovery on the scope of your representation and when information became available to you to determine whether any alleged trust placed in Mr. Robinson by Universitas was reasonable, whether Universitas was reasonably able to protect its rights given that it was represented by counsel from a prominent New York law firm, and whether a duty to a non-client would have under the circumstances impaired Mr. Robinson's performance of his duty to his client.
3. We reserve our rights to pursue other inquiries to which you may be a source of important factual information.

I cannot imagine what objection you may have to our other deposition notices. However, if you intend to seek a protective order, I assume you will join these claims for protection as well. I am still awaiting your response to my letter of January 31 and a time frame for when Universitas will be supplementing its production.

Regards, Seth



THE LAW OFFICES OF SETH L. MARCUS
777 Westchester Avenue, Suite 101
White Plains, NY 10604

212.686.2555 / seth@slmarcuslaw.com

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From: Paula Colbath [mailto:pcolbath@loeb.com]
Sent: Tuesday, February 07, 2017 3:21 PM
To: Seth Marcus <seth@slmarcuslaw.com>; Paul S Samson <PSamson@riemerlaw.com>
Cc: Leily Lashkari <l lashkari@loeb.com>
Subject: RE: Universitas v. Robinson

Seth: I write to request that you withdraw your improper "Notice of Deposition" for my deposition that was attached to your email of yesterday's date (see below). For a number of reasons your so-called "Notice of Deposition" is wholly improper and appears to have been served (among other reasons) to annoy, harass, seek pre-action discovery, and/or to set up a fictitious basis to seek my firm's disqualification. Any information I would have would be protected by (among other things) the attorney-client privilege and/or work product doctrine. Please let us know, **by return email today**, whether you will voluntarily withdraw your "Notice of Deposition" and, if not, what relevant, non-privileged information you plan to seek from me at deposition that cannot be obtained from some other source. If we do not hear from you today, we will proceed to file a motion for protective order prohibiting the deposition from going forward.

This is a good faith effort to confer with you and your client regarding the "Notice of Deposition" for my deposition, before we proceed with a motion for a protective order.

We are reviewing the other deposition notices attached to your email, and reserve all objections we may have to them.

Regards,

Paula Colbath

Paula Colbath

Partner



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Direct Dial: 212.407.4905 | Fax: 212.937.3189 | E-mail: pcolbath@loeb.com

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From: Seth Marcus [mailto:seth@slmarcuslaw.com]
Sent: Monday, February 06, 2017 4:31 PM
To: Paula Colbath; Paul S Samson
Subject: Universitas v. Robinson

Paul/Paula:

Attached please find Defendant's deposition notices in the above referenced matter. Also I am still awaiting your response to my letter of January 31. By what date do you intend to supplement your responses to Defendant's demands?

Regards, Seth



THE LAW OFFICES OF **SETH L. MARCUS**
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212.686.2555 / seth@slmarcuslaw.com

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